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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

C.R.P.(PD)(MD)No.43 of 2006

1.Ganesan (died)
2.Pitchaiammal
3.Ranjithkumar
4.Rajkannu ... Petitioners

(Petitioners 2 to 4 were brought on record as legal heirs of the deceased sole petitioner vide Court order date 09.01.2017 made in CMP 102 to 104 of 2017 in CRP(PD)(MD)No.43/2006).

vs.

1.Kathirvel(died)
2.V.Baskaran
3.S.Alagesan(died)
4.K.Gunasekaran
5.Solaimuthu
6.Sasikumar
7.Manimaran ... Respondents

(Respondent No.4 brough on record as LR of the deceased 1st respondent vide order dated 10.02.2017 made in CMP(MD)Nos.927, 928 & 932/2017 in CRP No.43/2006).

(Respondents 5 to 7 were brought on record as legal heirs of the deceased third respondent vide Court order dated 10.02.2017 made in CMP nos.929, 930 and 931/17 in CRP No.43/2006).

PRAYER: This Civil Revision Petition is filed under Section 227 of the Constitution of India, against the fair and decreetal order dated 30.09.2003 passed in I.A.No.610 of 2002 in O.S.No.160 of 1995 on the file of the learned District Munsif cum Judicial Magistrate, Lalgudi, Tiruchy District by allowing this Civil Revision Petition and direct the District Munsif CUM Judicial Magistrate, Lalgudi to restore the suit in O.S.No.160 of 1995 on his file and proceed the Trial.

For Petitioner: Mr.R.Jeyaramachandran
For R4 to R7 : Mr.K.Govindarajan
for M/s.Sarabhavuma Associates

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ORDER

This revision is directed against the order made in I.A.No.610 of 2002, which was an application seeking condonation of delay of 242 days in filing the application for restoration of the suit in O.S.No.160 of 1995 on the file of the District Munsif, Lalgudi (O.S.No.395 of 1994 on the file of the District Munsif, Thuraiyur), which was dismissed for default.

2. The reasons assigned for the delay are that the petitioner was not aware of the transfer of the suit from the District Munsif, Thuraiyur to the District Munsif Court, Lalgudi. It is also claimed that his counsel Mr.Jeyakumar left the profession seeking brighter fortunes.

3. The application was opposed by the respondents / defendants denying the averments made in the affidavit. It was also claimed that the reasons assigned would not amount to sufficient cause within the meaning of Section 5 of the Limitation Act.

4. The learned District Munsif, who heard the application, on a hyper technical and dogmatic approach dismissed the application faulting the petitioner for not examining his counsel, who had admittedly left the profession.

5. This Court and the Hon'ble Supreme Court have been reiterating the requirement of the Courts to be liberal in the matters of condonation of delay, since Courts are respected only for their ability justice and not for legalizing in justice.

6. The Hon'ble Supreme Court in ***University of Delhi Vs. Union of India and others*** [2019 SCC online SC 1634] had held that liberal approach is mandatory in the matters of delay.

7. It is admitted fact that the suit, which was pending before the District Munsif Court, Thuraiyoor was transferred to the District Munsif Court, Lalgudi on formation of the said Court. Ofcourse, this Court had held that no separate notice is necessary to the parties while such administrative transfers are effected, but unfortunately, the petitioner's counsel had left the profession and therefore, the petitioner was not informed of the transfer. No doubt, the petitioner could have examined his counsel namely, Mr.Jeyakumar, who had left the profession. The Courts should be alive to the difficulties involved in the examination of a Lawyer, who had left the profession. I am therefore, of the considered opinion that the order of the trial Court is materially irregular and as such the trial Court did not take into account the practical difficulties involved in the examination of the Lawyer, who had left the profession as witness on the side of a party.

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8.I am of the considered opinion that the petitioner should be given a chance to prosecute the suit. Hence, the order of the trial Court dismissing the application for condonation of delay is set aside and this Civil Revision Petition is allowed and the delay of 242 days in filing an application to restore the suit is condoned. No costs.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

To

The District Munsif cum Judicial Magistrate,
Lalgudi, Tiruchy District.

+1 CC to M/s.A.JAYARAMACHANDRAN, Advocate (SR-5044[F]

+1 CC to M/s.SARVABHAUMAN ASSOCIATES, Advocate (SR-5175[F]

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